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Committee of Advertising Practice (Non-broadcast)

Guidelines for producing marketing for sports supplements

CAP Help Notes offer guidance for non-broadcast marketing communications under the British Code of Advertising, Sales Promotions and Direct Marketing (the CAP Code). For advice on the rules for TV or radio commercials, contact Clearcast www.clearcast.co.uk for TV ads or the RACC www.racc.co.uk for radio ads.

These guidelines, drawn up by the Committee of Advertising Practice (CAP) Compliance team, are intended to help marketers, agencies and media interpret the rules in the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code).

MHRA (Medicines and Healthcare products Regulatory Agency)

The Code requires marketers to be able to substantiate their marketed claims. However, marketers should remember that before submitting any evidence to CAP, they must first check that their claims are legal under medicines law. If the MHRA classes a product as medicinal, either by function or presentation, marketers need to obtain a marketing authorisation from the MHRA before selling that product in the UK. Medicine law defines medicinal claims as those that suggest the product can treat or prevent a disease or restore, correct or modify physiological functions in human beings, as well as those that refer to interference with the normal operation of physiological function.

The MHRA Borderline Section will give a view on whether a product is medicinal and can be contacted at the following: Borderline Section, 16-1, MHRA, Market Towers, 1 Nine Elms Lane, London SW8 5NQ, Tel: 020 7084 2759, Fax: 020 7084 2439, or by e-mail at info@mhra.gov.uk.

In addition, the Code require marketers to hold sufficient evidence to support their marketing claims, even if they are not considered by the MHRA to be medicinal.

CAP Code

The Code states:

- 50.1 Medical and scientific claims made about beauty and health-related products should be backed by evidence, where appropriate consisting of trials conducted on people... Substantiation will be assessed by the ASA on the basis of the available scientific knowledge.
- 51.1 A weight reduction regime in which the intake of energy is lower than its output is the main self-treatment for achieving weight reduction. Any claims made for the effectiveness or action of a weight reduction method or product should be backed where appropriate by rigorous practical trials on people; testimonials that are not supported by trials do not constitute substantiation.

Only when both the MHRA confirms the legality of the claims and CAP is happy that sufficient evidence is held to support them can performance claims for the product be legitimately made.

Evidence

If CAP has not previously seen evidence to support a performance claim, a marketer must collate sound data to form a body of evidence before submitting this to CAP to be assessed. The following provides some idea of the sort of evidence CAP would expect to see for 'new' or 'breakthrough' claims:

- Studies should follow a recognised methodology (double-blind, placebo controlled). Studies without human subjects will almost certainly not be acceptable on their own.

- Studies should usually be product specific i.e. the subjects must have consumed, as far as possible, the product in question.
- Studies should be large enough to demonstrate the proposed effect and be of sufficient duration to ensure the beneficial effect is maintained over a reasonable period of time.
- Full data must be submitted to CAP; abstracts or a summary of the study will not be sufficient.
- If studies have not been published in reputable, peer-reviewed journals, an objective review should be carried out by a suitably qualified individual possessing relevant expertise before the data is submitted to CAP.
- If several studies are provided to back up several claims, it should be clear which study supports which claim.

Problematic claims

The following are examples of claims that have not been allowed in the past for any sports supplement, either because the MHRA has regarded the claims as medicinal and there is no appropriate marketing authorisation or because CAP has not been satisfied that the marketer held sufficient evidence to support the claim:

- Initiate / accelerate / speed up fat burning
- Thermogenic fat burner
- Suppresses the appetite
- Natural testosterone booster / increase testosterone levels
- Strong increase in sex drive / boost sexual function
- Promote improved sleep and mood / boost focus
- Enhance body's thyroid function
- Enhance insulin function
- Increases your growth hormone
- Increases the metabolic rate
- Boosts the immune system
- Increase lean mass by ...% and reduce body fat by ...% in just x days
- Maintains muscle mass
- Prevents your body from burning muscle tissue

Creatine

To date, CAP has seen evidence to support the following claims for the effects of creatine taken in the form of supplementation:

- Supplementing with creatine could increase muscle power output in physically active individuals.
- Supplementing with creatine could increase work output in physically active individuals.
- Supplementing with creatine (as directed) could reduce muscle fatigue during short maximal exercise.
- Creatine supplementation could increase maximal exercise performance during repeated sprints.
- Creatine phosphate is a major source of energy during short maximal exercise.
- Supplementing with creatine (as directed) could increase muscle creatine levels in individuals with low initial muscle creatine levels.
- Supplementing with creatine (as directed) could increase muscle phosphocreatine levels in individuals with low initial muscle creatine levels.
- Creatine, when used in combination with strength training could produce greater increase in lean body mass than training alone.
- Supplementing with creatine (as directed) could increase muscle water content.
- Creatine, when used in combination with strength training could produce greater strength gains than training alone.
- Creatine, when used in combination with strength training could produce greater gains in lean body mass than training alone.
- Creatine, when used in combination with strength training could produce greater gain in muscle girth than training alone.
- Creatine, when used in combination with strength training could produce greater gains in muscle fibre area than training alone.

The above claims are based on a 3-5g creatine dosage per day. If marketers wish to make creatine claims other than those above, they must first be able to provide CAP with sufficient evidence to substantiate them.

Comparative claims

As well as efficacy claims, marketers are expected to hold documentary evidence to support all comparative or absolute claims, e.g. “We’re the No. 1 supplier of supplements”, “We sell the best supplements in the UK”, “We sell the most potent and effective supplements”, “More powerful than...” and “All our products are 100% pure”.

Visuals and testimonials

‘Before’ and ‘after’ visuals demonstrating weight loss or improved muscle definition are likely to be problematic if the efficacy of that product is unproven because they imply the product will have the effect shown. If marketers have provided the ASA or CAP with adequate evidence to support their efficacy claims, they must be able to show that any ‘before’ and ‘after’ visuals are genuine, representative and have not been tampered with. Marketers should note that claims, including photographs, which are visible on product packaging in marketing communications, also fall within the remit of the Codes and require substantiation.

The same advice would apply to the use of testimonials in marketing communications. The ASA and CAP would not accept a user’s opinion of a product as proof of efficacy, since they have not taken the product under controlled clinical conditions and are therefore not in a position to prove the product works as claimed. The Code states:

14.3 Testimonials alone do not constitute substantiation and the opinions expressed in them must be supported, where necessary, with independent evidence of their accuracy. Any claims based on a testimonial must conform with the Code.

Other areas of concern

As well as preparing marketing with a sense of responsibility to consumers and to society, marketing communications should comply with the law and should not incite anyone to break it. Therefore, claims such as “The FDA tried to ban this product...”, “Same effects as the banned steroid...”, “Most

potent steroid alternative...” and “Buy now whilst the product is still legal...” are likely to be seen as encouraging socially irresponsible behaviour or implying a medicinal effect and might be unacceptable under the Codes.

If the ASA and CAP are satisfied that a product used in conjunction with, for example, an exercise regime has an effect, marketers must be careful not to imply that the use of their supplement alone will have the advertised effect.

Marketing communications must emphasise that the desired effect will be achieved when used as part of an exercise regime, e.g. bodybuilding, weight training, athletics, football, rugby, etc., and identify which groups are likely to benefit from supplementation, for example “...provides a favourable environment for muscle growth whilst weight training”.

Further advice

Guidance on acceptable evidence can be found in the CAP Help Note on Substantiation for Health, Beauty and Slimming Claims. Guidance on how the ASA and CAP use experts can be found in the CAP Help Note on the Use of Experts by the ASA and CAP. Guidance on slimming marketing communications can be found in CAP’s Slimming Guidelines for Press Advertisements. These can all be viewed or downloaded from the CAP website at www.cap.org.uk.

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or by email on copyadvice@cap.org.uk. The CAP website at www.cap.org.uk contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code rules and ASA adjudications.

August 2002
Revised: January 2003
Revised: March 2003